IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7283 of 2005
with
SPECIAL CIVIL APPLICATION No 7284 of 2005
To
Special Civil Application No. 7294 of 2005.

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIRVA KOTHARI & Others.

Versus

STATE OF GUJARAT THR' SECRETARY & Others.

Appearance:

1. Special Civil Application No. 7283 of 2005
Mr. Shirish Joshi and MR HJ NANAVATI for
Petitioners.
NOTICE SERVED BY DS for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/04/2005

ORAL COMMON JUDGEMENT

In this group of petitions the respective petitioners, i.e., students who have passed their

graduation in Medical Science (MBBS) in the month of April 2004 (who will hereinafter be referred to as "1999 batch students") have prayed for an appropriate writ, direction or order for a declaration that the combined merit list prepared by the respondent authorities for the purpose of granting admission to Post Graduate course in different branches of disciplines of Medicine in the Medical Colleges affiliated to Saurashtra University for the Academic Year 2005 is arbitrary, illegal and unconstitutional. It is also further prayed for a declaration that only the petitioners, i.e., 1999 batch students are required to be considered for admission to Post Graduate courses in the Medical colleges affiliated to Gujarat University for the Academic Year 2005. The petitioners have also challenged the action of the respondent authorities in combining the merit list of students of 1998 batch and 1999 batch for the purpose of granting admissions to the Post Graduate courses in the Medical Colleges affiliated to the Saurashtra University for the Academic Year 2005.

2. Shri Shirish Joshi, learned advocate appearing for the respective petitioners had submitted that the petitioners are the 1999 batch students who have completed their graduation in Medicine (MBBS) in April 2004. The 1998 batch students have completed their graduation in Medicine (MBBS) in the month of January 2004. It is the contention on behalf of the petitioners that there are 125 students in each batch and there will be 250 students in all of 1998 batch as well as 1999 batch. It is submitted that there are only 56 seats available for admission in post graduation in the Medical colleges affiliated to Saurashtra University for the academic year commencing in June 2005. It is submitted that as the 1998 batch students are also given admissions to the Post Graduate courses in the Medical colleges affiliated to the Saurashtra University for the year 2005 along with the students of 1999 batch, i.e., petitioners in that case the petitioners' position in the merit list would be pushed back and/or there will be less seats available for the 1999 batch students, i.e.,the petitioners. Therefore, it is submitted that the action of the respondent authority in combining the merit list of the students of 1998 and 1999 batches for the purpose of granting admissions to the P.G. courses in the Medical Colleges affiliated to the Saurashtra University for the year 2005 is arbitrary and without authority of law as there is no Rule or Regulation which confers power on the respondent authorities to prepare such a combined merit list. It is also submitted on behalf of the petitioners that assuming that the respondents are having

such powers in that case the respondents are required to adopt the formula of "Normalisation Method" which is adopted by Birla Institute of Technology, Pilani (Rajasthan). It is submitted that if the formula which is known as "Normalisation Method" is adopted in that case the position of the petitioners in the merit list is likely to be changed and therefore it is submitted that the respondent authorities must adopt the formula of "Normalisation Method" while preparing the merit list/combined merit list of 1998 batch and 1999 batch students. For that purpose, the petitioners have relied upon the statements which are at Annexure 'B' to the petition to demonstrate what will be the position in the merit list at present and what would be the position of the merit list after adopting the formula of normalisation. Therefore, it is submitted that the respondent authorities ought to have adopted the formula known as "Normalisation Method" for the purpose of preparing the merit list. It is further submitted that in fact the Saurashtra University was contemplating to accept the submissions with regard to adopting the formula of Normalisation Method. However due to shortage of time as the admissions in the Post Graduation are required to be given on or before 1st May 2005 they have not adopted the formula of Normalisation Method it is requested to allow the present Special Civil Application.

3. In response to the notice issued by this Court, Shri JR Nanavaty, learned advocate appears with Shri Avinash Thakkar for Saurashtra University. Shri Dipen Desai, learned AGP appears for respondents No. 1 and 2. Shri Desai, learned AGP has submitted that as they are served only on 27th April 2005 he seeks time to file affidavit-in-reply which is objected to by Shri Shirish Joshi, learned advocate appearing for the petitioners as by 1st May 2005 the admission process will be over and the petitions will become infructuous. Therefore it is decided to consider the oral submissions made on behalf of the respondents and to decide and dispose of the present Special Civil Applications in absence of the affidavit-in-reply

4. Shri JR Nanavaty, learned advocate appearing on behalf of the Saurashtra University had submitted that as per the rules for admission to Post Graduate centre for the Faculty of Medicine of Saurashtra University is concerned as per Rule 2 those students who have passed MBBS examination from recognised Medical College of Saurashtra University or any other University after completion of internship are eligible for admission to Post Graduate Degree/Diploma Course under the Rules

framed by the University from time to time. However, the candidate should not be of more than 4 years standing after completion of internship on the day of regular admission. Thus it is submitted that a candidate can apply for admission in Post Graduation within 4 years of completion of internship. It is submitted that therefore the contention on behalf of the petitioners that 1998 batch students are not required to be considered for the purpose of admission in Post Graduation for the year 2005 and/or only the 1999 batch students are eligible for admission in Post Graduation for the year 2005 is absolutely misconceived and is contrary to the Rules. It is therefore submitted that the action of the respondent authorities in preparing the merit list of 1998 batch students and 1999 batch students is in accordance with the rules for admission to Post Graduate centre for the Faculty of Medicine of Saurashtra University. It is also further submitted that even as per the Rules more particularly Rule 6 and the Rules governing the appointment of the resident Government Medical Colleges and attached hospitals in the State a candidate who has passed MBBS is eligible for admission to First Year residency subject to the condition that candidates should not be more than 4 years standing after passing Third MBBS Examination on the day of regular admission to the First Year residency. It is also further submitted that this procedure is being followed in entire India and it is open on All India basis. It is also further submitted that so far as this year is concerned, the admissions in the Post Graduate studies in the Medical Colleges affiliated to the Saurashtra University is concerned admissions are already over on 26th April 2005 and out of 12 petitioners, 10 students have already got the admission. Therefore it is submitted that it is now too late for the petitioners to contend that the respondent authorities should have adopted the formula of Normalisation Method. It is also further submitted that the respondent authorities have acted as per rules after preparing the Merit List and have given admission in the Post Graduate courses and if the prayer of the petitioners to adopt Normalisation Method by preparing the merit list is accepted then it would be amending the Rule which is not permissible. Under the circumstances, it is requested to dismiss the present Special Civil Applications.

5. Shri Dipen Desai, learned AGP has after adopting the arguments submitted on behalf of Shri JR Nanavaty further submitted that in fact in January 2005 itself the petitioners were made aware that admissions in the Post Graduate studies in Medicine will be given after

preparing the Merit List of 1998 and 1999 batch students and only when the petitioners have found in the month of April 2005 that they are not likely to get admission in the branches of disciplines of their choice they have preferred the present Special Civil Applications belatedly. It is further submitted that the admission process for granting admission to Post Graduate Courses in different branches/disciplines of Medicine in the Medical Colleges affiliated to Saurashtra University for the Academic Year 2005 is already over and the admissions are already given. It is also further submitted that in fact there is no prayer of the petitioners either for amending the Rule and/or for directing the respondents to prepare the merit list after adopting the Normalisation Method and therefore in absence of any prayer and/or relief as the petitioners are not entitled to any relief. Under the circumstances, it is requested to dismiss the present Special Civil Applications.

6. Heard the learned advocates appearing on behalf of the petitioners. It is the contention on behalf of the petitioners that the action of the respondent authorities in combining the merit list of the students of 1998 batch and 1999 batch for the purpose of granting admission to the Post Graduate Courses in the Medical Colleges affiliated to the Saurashtra University for the 2005 is arbitrary and without authority of law as there is no Rule or Regulation which confers power on the respondent authorities to prepare such a combined merit list. If we consider Rule 2 of the Rules for admission to Post Graduate centre in the Faculty of Medicine in Saurashtra University, then it is very much clear that those students who have passed the MBBS examination from recognised Medical College of Saurashtra University or any other University after completion of internship are eligible for admission to Post Graduate Degree/Diploma Course. However, the candidates should not be of more than 4 years standing after completion of internship on the day of their regular admission meaning thereby a candidate can apply for admission to the Post Graduate courses in the Medical Colleges within 4 years of completion of internship. Therefore, considering the aforesaid Rule, a 1998 batch student batch is eligible for admission to Post Graduate Course. Therefore it cannot be said that the action of the respondent authorities in preparing the Merit List of students of 1998 batch and 1999 batch is in any way illegal and/or contrary to the Rule. On the contrary such an action is in consonance with the Rules for admission to Post Graduate centre in the Faculty of Medicine of Saurashtra University. If the students of 1998 batch are eligible

for admission for the academic year 2005 along with the students of 1999 batch (the petitioners) there is no question of taking away any seat of the petitioners. Admissions to the Post Graduate Courses are required to be given on merits and therefore the contention on behalf of the petitioners to declare the action of the respondent authorities in combining the merit list of the students of 1998 batch and 1999 batch for the purpose of granting admission to Post Graduate courses in the Medical Colleges affiliated to Saurashtra University for the year 2005 is illegal and/or contrary to the Rules cannot be accepted. Even as per the Rules governing the appointment of resident Government Medical Colleges and attached hospitals in the State a candidate can apply for admission in the Post Graduation or any residency within 4 years of passing the Third MBBS examination. It is also required to be noted that the aforesaid procedure is followed on All India basis. The contention on behalf of the petitioners that even if it is permissible then in that case also the respondent authorities are required to adopt the formula of Normalisation Method is concerned, apart from the fact that to grant such a prayer would be to supplement a thing which is not there in the Rule and/or to amend the Rule which is not permissible. One has to consider the Rule as it is. Apart from the aforesaid fact now it is too late at this stage to consider the submissions on behalf of the petitioners directing the respondent authorities to adopt the formula of Normalisation Method as the admissions for the Academic Year 2005 are already over the students are already given admission in the Post Graduation course. The petitioners were made aware in the month of January 2005 itself that there will be a combined merit list of 1998 and 1999 batch. Still they did not challenge the action and only on 25th April 2005 at the last moment and as stated hereinabove the admissions to the Post Graduate Courses are already over, the prayer of the petitioners directing the respondent authorities to adopt the formula of Normalisation Method for the purpose of preparing the merit list for the academic year 2005 cannot be granted now.

7. For the reasons stated hereinabove, all the petitions are required to be dismissed and are accordingly dismissed. Notice in each of the petition is discharged.

{ M.R. Shah, J. }

rmr.